



## MEMORANDUM

Date: April 2, 2015

To: Senator Paul Davis, Chair  
Representative Michael Shaw, Chair  
Members of the Joint Standing Committee on Inland Fisheries and Wildlife

From: Chandler Woodcock, Commissioner

Subject: Letter regarding L.D. 640 in lieu of testimony.

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Dear Committee Members,

The Department is neither for nor against L.D. 640. This resolve proposes a working group and specific stakeholder interests to review the need for statutory changes or agency rules to further guide implementation of “incidental take” prohibitions in the Maine Endangered Species Act (MESA). A 1999 amendment to the Act provides authority to the Commissioner of Inland Fisheries and Wildlife, to permit take that is incidental to an otherwise lawful activity, that does not jeopardize the recovery of a listed species, and details strategies in an “Incidental Take Plan.”

The Department offers several comments for consideration by the Committee in relation to current statute provisions outlined in **12 MRSA §12808, sub-§3**:

- Prior to 1999, The MESA specified that taking of a state-listed endangered or threatened species was prohibited. However, MDIFW had found that take is unavoidable in some circumstances. In 1999, the Maine State Legislature amended the MESA to provide guidelines for special circumstances to allow the incidental taking of state-listed species.
- Incidental Take Permits (ITPs) are not required, and the decision to obtain a permit lies with the individual or entity conducting the proposed activity. Some are advised by the Department, but many are requested by an applicant, especially for high profile projects.
- There have been no enforcement actions for incidental take or other prohibitions due to negligence under the Maine Endangered Species Act since the Act’s inception.



- From the thousands of formal project reviews involving state-listed species approximately 16 formal “incidental take plans” have been developed since the provision for them was adopted in 1999.
- No incidental take plans adopted to date, under the Maine Endangered Species Act, have addressed forestry or agriculture practices. Only one has involved residential development. Most have involved intensive, large-scale development actions including commercial development, energy infrastructure, and aquatic dam maintenance or removal projects.
- An approved ITP provides long-term assurance to landowners, businesses, municipalities, and state agencies that project activities were conducted in full compliance with the MESA.
- An incidental take plan developed under State law does not have standing for comparable expectations prescribed by federal agencies for species designated under the U.S. Endangered Species Act.

In summary, while the Department has only engaged the Incidental Take Plan provisions of the Maine Endangered Species Act sparingly, it has found the tool to be of general value by adding a component of regulatory flexibility to the environmental review process for those limited cases where a high likelihood of take is deemed unavoidable. We can provide a copy of the Department’s current guidance for understanding the benefits and procedures for the incidental take permitting process.

If you have any additional questions or concerns please feel free to contact Commissioner Woodcock at 287-5202.